

**TIVERTON PLANNING BOARD
MINUTES OF MEETING
August 5, 2008**

Chair Noel Berg called the regular meeting of the Tiverton Planning Board to order at 7:00 P.M. at the Town Hall, 343 Highland Road. Members present were: Vice Chair Rosemary Eva, Ms. Nebergall, Ms. Cote, Ms. Sylvester (arrived at 7:10 P.M.), Mr. Raposa and Mr. Corr (arrived at 7:05 P.M.). Also in attendance were the Board's legal counsel Peter D. Ruggiero, Director of Public Works Stephen Berlucchi and Town Planner and the Planning Board's Administrative Officer Christopher Spencer.

1. Samuel Silva – 85 Knotty Pine Road – Tiverton, RI 02878 – Re: Extension of Surety (\$56,000) & Status – Expiration (8/16/10) – W/S Brayton Road; S/S Emma James Way – Knotty Pine Road Extension The Chair announced that the new Letter of Credit in the amount of \$56,000 had been received by the Planning Board Office. Therefore, this petition was concluded.

2. Stephen E. & Susan B. Plaud – 1988 Main Road – Tiverton, RI 02878 – Minor Subdivision (No Road Required) – Concept Plan Review – E/S Main Road, South of Hillside Avenue – 2 Lots on 2.71 acres (118,050 +/- SF) in R-40 Zone Applicant Stephen E. Plaud was present on behalf of the petition. The Chair noted that a letter had been received from the applicant's engineer and surveyor Donald Medeiros, stating that he could not be present at the meeting (See file). Mr. Plaud stated that there were currently two (2) dwellings on the property, addressed as 1988 and 1986 Main Road. One dwelling had been built in the 1930's and the other in the 1950's and that his daughter currently resides in one of the dwellings, which she would like to purchase.

The Chair asked Mr. Ruggiero if this could be handled as a land condominium, with legal documents defining areas around each unit/residence. The Chair noted that the proposed subdivision would ask the Planning Board to recommend zoning variances for a new lot with no frontage. He also noted that 1988 Main Road had been built in the 1950's as a ranch house and was a pre-existing non-conforming second dwelling on the lot. He asked if the upgrades to the 1988 Main Road residence in the 1990's, which increased the size of the dwelling, required variances for increasing the non-conformity. Mr. Plaud replied that he did not recall. The Chair asked if the Zoning Officer had made a determination. Mr. Plaud replied that he did not recall.

The Chair noted that a zoning variance had been issued in 1995 for an "in-law apartment" over the garage of 1988 Main Road. Mr. Plaud replied that his mother-in-law still resided in the apartment, which was open to the rest of the home and noted that it did have kitchen facilities.

The Chair stated that this subdivision could be problematic for the Planning Board. He suggested that the applicant might want to consult an attorney to explore the possibility of legally selling the units separately without a subdivision. He also stated that the applicant might need a determination from the Zoning Officer regarding the expansion of a non-conforming use. Ms. Eva agreed with the Chair that a land condominium might be preferable to a subdivision; especially since Lot B would be landlocked by the proposed subdivision and Lot A would be more substandard in size. A discussion ensued regarding the definition of a multi-family dwelling and the allowable number of kitchens within a single-family dwelling.

The Chair reviewed the requested variances, including frontage for Lot B and lot area for Lot A. He noted that there may be an expansion of a non-conforming use, and that it was unclear if the driveway easement area had been deducted from the area of Lot A and opined that approval of this subdivision would set a bad precedent.

Mr. Plaud stated that this was an unusual situation, as both dwellings were pre-existing. The Chair opined that there were alternate remedies to the situation and suggested that the applicant meet with the Zoning Officer to determine what variances would be required. Mr. Raposa noted that there were limited options for this unique piece of property. He too opined that a condominium might be preferable and stated that it would be best to

limit the number of variances needed. Mr. Plaud stated that he was not sure how a condominium would work. The Chair replied that the applicant would need the advice of an attorney.

Ms. Eva noted that additional dwelling units on the property would not be allowed. She asked if there was public water. Mr. Plaud replied in the affirmative, noting that there were separate water services. He also noted that the lot to the north contains 15,000 square feet, and that his proposed lots would be larger. The Chair noted that if a subdivision was the only option, some frontage should be given to the back lot, with a common driveway and stated that he would not be in favor of creating a lot with no frontage. He repeated his suggestion that the applicant speak with the Zoning Officer regarding expansion of a non-conforming use. With this, the discussion ended.

3. Awashonks Realty, Inc. – 95 Sandra Lee Lane – Tiverton, RI 02878 – Re: Unaccepted Street Improvement – Edward Avenue – Last Reviewed by Planning Board 3/18/08 Applicant Mark DeMello of Awashonks Realty, Inc. and engineer Kamal Hingorany of Narragansett Engineers were present on behalf of the petition. The Chair quickly summarized the discussion at the March 18th meeting (See minutes of 3/18/08).

Mr. Hingorany stated that he had added two drywells and a swale on the new plan to handle any water coming from the subject parcel. The proposed drainage improvements were discussed. Mr. Hingorany noted that both the Fire Department and Police Department had approved the plan. The Chair noted that Mr. Berlucchi had also approved the plan. Mr. Berlucchi stated that the drywell typical cross section should use “double washed ¾” stone” and that a dimension was missing on the street cross section on the plan. He also asked about the filter fabric in the dry well, noting that it must be outside the stone (between the stone and the earth) and located all the way around. Mr. Hingorany agreed to make the changes.

Ms. Eva asked how access would be provided to Block 158 Card 20, the adjacent parcel to the west. Mr. Hingorany replied that the lot owner would need wetlands approvals to build and could continue Edward Ave. He noted that the parcel was currently vacant and made up of mostly wetlands and a wetlands buffer area.

Mr. Corr asked when the subject parcel was created. Mr. Hingorany replied that it was part of the Sawdy Pond Park Plan of 1929. Mr. Corr stated that he thought the entire frontage needed to be improved. The Chair stated that this was not possible due to wetlands.

Ms. Eva inquired about surety, noting that all improvements would need to be inspected. Mr. DeMello asked if the work could be finished before a building permit was issued instead of posting surety. Mr. Berlucchi stated that there should be a surety posted for the street construction. Mr. DeMello replied that this was the first he had heard of the requirement. Mr. Berlucchi noted that the surety was needed in case the applicant started the road construction and did not finish. He noted that approximately 260’ of roadway would be improved. Ms. Eva referred the applicant to the Zoning Ordinance’s Article VI, Section 8 – Unaccepted Streets.

The Chair suggested that this petition should be continued to the August 19th meeting, with a surety estimate submitted and revisions per Mr. Berlucchi. He stated that “clean” plans were necessary for approval. Mr. DeMello suggested that construction would cost approximately \$20,000. Ms. Eva noted that the improved road would be unaccepted by the Town and would not receive services such as trash pick up or snow plowing.

Ms. Eva made a motion to continue to the August 19th meeting. Ms. Cote seconded the motion. The motion passed unanimously. Ms. Eva, Ms. Nebergall, Ms. Cote, Ms. Sylvester, Mr. Berg, Mr. Raposa and Mr. Corr voted in favor.

4. Mark & Jane Wright – 3453 Main Road – Tiverton, RI 02878 and Ruth E. Manchester & Citizens Union Savings Bank of Fall River, Trustees – 3425 Main Road and Charles E. Rosenthal – 37 Nonquit Lane – Tiverton, RI 02878 – Minor Subdivision – (Road Required) – Preliminary Plan Review – Public Hearing – Northwest of Nonquit Lane, W/S of Main Road – The Wright Property – 2 Lots (TC – 09/29/08) Attorney Jeremiah Leary, applicant Mark Wright and engineer William Smith of Civil Engineering

Concepts were present on behalf of the petition. Also in attendance was Attorney David Martland representing abutters James and Amy Hagerty.

Mr. Leary stated that he had a letter of support signed by thirteen (13) abutters and distributed a package of documents to the Board members. He gave a brief history of the two lot minor subdivision and the previous version which had been denied by the Planning Board on May 20, 2008. He compared the denied plan to the new plan. Mr. Leary noted that the applicant had received a zoning variance in 2004 in order to construct a new (second) dwelling on the parcel. He stated that at that time the intention was to disable the existing house as a residence once the new dwelling was completed and stated that the Wrights had no intent to subdivide the land in 2004. He stated that due to "a severe business setback", the Wrights must sell the new house and did not wish to move from their existing house.

Mr. Leary stated that abutter Ruth Manchester had agreed to convey a piece of her property to the Wrights to provide frontage on Nonquit Lane. He asserted that with the transfer from Manchester the Wright lot would have sufficient frontage on Nonquit Lane to create a road extension. Another aspect of the plan would convey a portion of abutter Charles Rosenthal's property to the Wrights, with an equal amount of land conveyed from Manchester to Rosenthal to keep the (Rosenthal) square footage unchanged.

The existing proposal would construct a new road (road extension) off of Nonquit Lane, with a second cul de sac to provide frontage for the two new lots. Mr. Leary stated that the applicant would have no objection to constructing the new road to Town specifications, although the existing plan showed a private, gravel road that would require a waiver. Mr. Leary stated that the existing house would be relocated to conform to the R-80 setback requirements and that the existing deck and garage would be removed.

Mr. Leary described the current access to the site, as over the southern edge of the existing Nonquit Lane cul de sac with a gravel-surfaced driveway through an opening in a stone wall and noted that this access was a source of controversy. He stated that the proposed plan would eliminate the need to use that entrance. Mr. Leary stated that the proposed plan conformed completely to the subdivision regulations.

Mr. Smith described the parcels to be conveyed as part of the plan and stated that the applicant was flexible as to the public / private status of the proposed road extension. The Chair stated that the plan notation that a portion of property would be "conveyed to Nonquit Lane" confused him and asked if the proposal was to make this part of Town property. Mr. Leary replied that it was up to the Planning Board. The Chair stated that it would be more direct to convey the property to Wright, so that the Town would not bear responsibility for the property.

The Chair asked if there was a defeasible easement on the existing property. Mr. Leary stated that there were two options:

- Construct a private road off of the public cul de sac, which would require a Planning Board waiver, or
- Construct a public road extension.

Mr. Ruggiero stated that the plan called for a twenty-foot (20') wide private road. Ms. Nebergall asked how the proposed roadway would meet the Town's requirements. Mr. Leary replied that it would not; Town standards require twenty-two feet (22') of pavement plus two one foot (1') berms on each side, with a standard cul de sac. Ms. Nebergall inquired about required frontage. Mr. Leary replied that seventy-five feet (75') of frontage was required on a cul de sac, and the new lots would have one with one hundred fourteen feet (114') and the other with one hundred thirty two feet (132') of frontage.

Mr. Corr suggested that the best option might be to defease the existing cul de sac and install a new one on the Wright's property. Mr. Ruggiero noted that this suggestion would be an abandonment of town property, which would be an issue for the Town Council. Mr. Smith stated that crossing the Hagerty property with a new road would be an issue. Mr. Corr replied that the Hagerty's would gain land through the defeasement. The Chair stressed that the Board could not design the proposal for the applicant.

Mr. Leary stated that if the plans were changed to reflect a public road extension, they would conform to the Land Development and Subdivision Regulations. Ms. Eva noted that a pre-existing non-conforming lot would be altered (Rosenthal), asking if this would require the lot to conform to existing zoning (lot area, setbacks, etc). The Chair noted that the net change to the lot area would be zero. Mr. Ruggiero replied that this issue would require a zoning determination from the Zoning Official.

The Chair opened the public hearing portion of the meeting. Sue Kramers, 60 Nonquit Lane, stated that she was an abutter across the Nonquit Lane cul de sac having lived there for twenty (20) years and that there had always been a direct opening to the subject lot from the cul de sac. She stated that the previous owner (Jesse Dupont) had utilized it. Ms. Kramers expressed her support for the petition.

David Cwalina, 3447 Main Road, read a statement aloud (See file) and stated that he was not present to argue against the petition, but that he had concerns regarding the easement from Main Road to the subject parcel through his property. He stated that he had not received notice of the previous hearing (May 20th), but had been noticed regarding the 2004 Zoning Board meeting. He stated that he has seen much traffic through his property, including construction and delivery vehicles, which he stated that constituted a safety and nuisance issue. Mr. Cwalina also expressed his concern regarding emergency vehicle access and suggested that the new lots should have Nonquit Lane addresses. He stated that he had spoken with the Fire Chief regarding the issue, who had no objections. Mr. Cwalina stated that Chief Lloyd had told him that he would comment on the plan if asked to by the Board. Mr. Cwalina also took issue with the depiction of a twenty-foot (20') wide easement, since the recorded document described a single lane access. He stated that he would like this aspect of the plan corrected. He added that he would like to see the existing easement abandoned.

Attorney Martland (representing the Hagarty's) stated that he was confused as to what was before the Planning Board for consideration. He stated that he had reviewed the plan and thought the proposed roadway would be private and did not think that a public road was before the Planning Board for consideration. He added that he did not think that the proper frontage was depicted. He asked if the lot width requirement had been met. Mr. Smith replied that the frontage on the proposed cul de sac was adequate and that the required lot width was met at the location of the building envelope. A discussion ensued.

Mr. Martland asked if the existing barn would require Zoning Board relief for being an accessory structure within the front yard. The Chair stated that this had not yet been considered. Mr. Martland noted that the applicant had represented to the Zoning Board (in 2004) that there would be no subdivision of this lot. He acknowledged that this was not specifically mentioned as a condition. The language of the zoning decision was discussed. Mr. Martland opined that the Planning Board did not have jurisdictional authority to move forward, and that there should be no further subdivision.

Mr. Martland discussed the proposed access off of Nonquit Lane noting that Nonquit Lane was part of a 1960's subdivision (Nonquit Hills Subdivision) and was a town-accepted road. He read aloud the restrictions imposed on Nonquit Lane properties that were part of that subdivision. He suggested that the restrictions prevent the proposed roadway and use of the Rosenthal property for part of the roadway. He distributed copies of the Zoning Board decision, a portion of the Zoning Board transcript and the restrictions. He also noted that the Wright and Manchester lots were not part of the 1960's subdivision.

Mr. Martland stated that his other issues depended on the public / private road status and whether or not Zoning Board relief would be required. He stated that his clients were also concerned about additional traffic on Nonquit Lane and conflicting traffic patterns. He stated that the financial considerations were understood. The Chair noted that the Planning and Zoning Boards could not consider financial matters.

Peter Moniz, 83 Captain's Circle, expressed his concern regarding the public / private road status. He stated that the Board should not make the decision for the applicant and that the Town should be trying to avoid private roads and opined that the road should be public.

Amy Hagerty, 64 Nonquit Lane, asked to be heard. Mr. Leary objected, stating that counsel represented her. The Chair allowed her to speak. She stated that she would like to elaborate on her safety concerns, and her objections to the habitual use of her land by the applicant. She stated that the applicant was trespassing, and creating the danger of a head-on collision. She opined that the proposed plan would exacerbate the problem.

Mr. Leary stated that the proposal would add one house to the current traffic and that the applicant would create either a public or a private road, with the Board to decide. He stated that the restrictions on the Nonquit Hills Subdivision were not enforceable by the Planning Board, but would be an issue for Superior Court. He added that he would argue that the restriction cited did not apply. Mr. Leary also stated that there had been no binding restriction on subdivision in the 2004 Zoning Board Decision and that the proposed subdivision conformed to the regulations in every respect.

Ms. Kramers acknowledged that safety was a concern, but that it could be easily handled with road signs. The Chair cautioned that this was not the venue for debate.

Mr. Raposa opined that if the road extension was public, he did not see a reason to object to the subdivision. He suggested that the existing cul de sac should be defeased, at the expense of the applicant. Ms. Nebergall agreed, and asked if the applicant would be willing to abandon the right of way across the Cwalina property. Mr. Leary replied that they would not be willing to abandon the right of way, but they would be willing to restrict common traffic and deliveries. The Chair stated that a reading of the deed would be required.

Ms. Sylvester stated that she did not have objections, and that she did not think that the Board could force changes to the existing Nonquit Lane cul de sac. She stated that it seemed to meet the Subdivision Regulations if a public road was proposed. She asked Mr. Ruggiero if the 2004 Zoning Board discussion regarding further subdivision was enforceable. Mr. Ruggiero replied that it was not enforceable, even if it was in the decision. He stated that the Zoning Board could not restrict subdivision.

Mr. Berlucchi stated that the original cul de sac should be removed. Mr. Leary stated that the Town Council and the abutters must agree. Mr. Ruggiero stated that curb line would be moved, but the right of way would not be abandoned and stated that the pavement would be removed, but property lines would not be altered.

Mr. Corr stated that he would like to see Nonquit Lane extended straight to Wright's property. Mr. Leary replied that this would require the applicant to act on property they did not own. Ms. Eva stated that she could not vote to approve the plan as presented due to safety concerns. She stated that the road should be public, and there should not be two cul de sacs adding that the Wrights should avoid using the right of way to Main Road due to safety concerns. Mr. Corr illustrated the elimination of defeasable easement of the first cul de sac following into the second with a hand drawn sketch.

The defeasing of the current Nonquit Lane cul de sac was discussed. Mr. Martland stated that his client would be interested in looking at a realignment of Nonquit Lane and could potentially support the plan. The Chair expressed his preference for a public road extending straight into a new cul de sac. He also supported abandoning the easement to Main Road. Mr. Ruggiero noted that a cul de sac realignment plan should show improvements and drainage within the existing cul de sac right of way, including driveways. Mr. Leary stated that new plan could be ready in time for the August 19th Special Meeting. The Chair noted that the time clock would expire on September 29, 2008.

The Chair suggested a continuation to August 19, 2008, with the public hearing to remain open and a new plan depicting a straight extension of Nonquit Lane and a consideration of the abandonment of the easement to Main Road. Ms. Eva noted that new plan would need to be mailed or delivered to members one week in advance of the meeting. Mr. Martland stated that he would not be available for the August 19th meeting and stated that it would be a hardship to find someone else to represent his clients.

Ms. Eva made a motion to continue the public hearing to August 19th with the public portion to remain open. Mr. Corr seconded the motion. The motion passed unanimously. Ms. Eva, Ms. Nebergall, Ms. Cote, Ms. Sylvester, Mr. Berg, Mr. Raposa and Mr. Corr voted in favor.

5. Puritan Management Co., Inc. – c/o Thomas J. Costa – 413 High Street – Fall River, MA 02720 – Re: Extension of Surety (\$373,247) & Status – Expiration (8/25/08) – N/S Bulgarmarsh Road, West of Whiffle Tree Lane – William Barton Reserve (28 Lots) Attorney Jeremiah Leary was present on behalf of the petition. The Chair stated that Mr. Leary had sent an email to the Planning Board Office (See file) in which he indicated the Mr. Costa would be closing with the bank on August 7th with the Letter of Credit extension to follow. The new Letter of Credit would have an expiration date of May 15, 2010. The current [temporary] Letter of Credit would expire on August 25, 2008. The Chair suggested that, as had been past practice, the Board could make a motion to call the surety. The call would not happen if the Letter of Credit was received by a certain date.

Mr. Raposa made a motion to call the Letter of Credit if the extension was not received by August 19, 2008. After a brief discussion, Mr. Raposa amended his motion to call the Letter of Credit if an extension was not received by close of business on August 18, 2008. Ms. Eva seconded the motion. The motion passed unanimously. Ms. Eva, Ms. Nebergall, Ms. Cote, Ms. Sylvester, Mr. Berg, Mr. Raposa and Mr. Corr voted in favor. Ms. Eva made a motion to place this item on the August 19, 2008 agenda for a status update. Mr. Corr seconded the motion. The motion passed unanimously. Ms. Eva, Ms. Nebergall, Ms. Cote, Ms. Sylvester, Mr. Berg, Mr. Raposa and Mr. Corr voted in favor.

6. Louis Ledoux – 2 Shore Road – Tiverton, RI 02878 – Re: Extension of Surety (\$75,000) & Status – Expiration (09/05/08) – W/S Lake Road, Ledoux Lane – Meadow Woods Phase 2 (8 Lots) Attorney Jeremiah Leary and engineer William Smith of Civil Engineering Concepts were present on behalf of the petition. The Chair noted that the Land Development and Subdivision Regulations stated that improvements should be completed within three years of approval. He noted that the Meadow Woods Phase 2 plan had been recorded on April 22, 2002. The Chair noted that a letter was received from Mr. Berlucchi, dated August 4, 2008 (See file) recommending a surety retention of \$34,500.

Ms. Eva noted that a surety reduction was not on the Board's agenda, only an extension of the expiration date. She asked if there was enough money in the surety to protect the Town and if the Town must use union labor if the surety was called as noted by the prior Director of Public Works. Mr. Berlucchi replied that he thought that work done by a public entity using public funds would require union labor, as was the case in Massachusetts. Mr. Ruggiero stated that there would be no prevailing wage requirement, but that it would need to go out to bid or the work could be performed by Town personnel. Mr. Berlucchi noted that there would be an additional cost involved in putting the work out for bid, which was not factored into his estimate.

Ms. Nebergall made a motion to retain the current surety amount of \$75,000. Mr. Raposa seconded the motion. The motion passed unanimously.

Mr. Smith stated that the final coat of asphalt had been installed last fall and the catch basin structures had been raised. He stated that the drainage needed to be cleaned and the shoulders dressed. The Chair noted that he had visited the site in years past for failure of the binder coat of asphalt. It was noted that there were still unsold lots. Ms. Eva asked if the extension fee (\$500) had been paid. Mr. Leary replied that it would be paid.

Ms. Nebergall made a motion to extend the \$75,000 Letter of Credit for three (3) years, with a new expiration date of September 5, 2011, contingent upon payment of the \$500 fee. Mr. Raposa seconded the motion. The motion passed unanimously. Ms. Eva, Ms. Nebergall, Ms. Cote, Ms. Sylvester, Mr. Berg, Mr. Raposa and Mr. Corr voted in favor.

7. Citizens Union Savings Bank – c/o Raymond Holland, Esq. – 1340 Main Road – Tiverton, RI 02878 – Major Land Development (No Road Required) – Major Subdivision – Final Plan Review – South of Bulgarmarsh Road, W/S Crandall Road, Bliss 4 Corners – 3 Lots – Located in a GC Zone (TC – 8/25/08)

Attorney Raymond Holland and engineer Todd Chaplin of Mt. Hope Engineering were present on behalf of the petition. Mr. Holland noted that the Planning Board Tax Certificate had been submitted for the file, as well as the Declaration of Restrictions, the locus on the current plan was unclear and would be corrected prior to recording. He then asked the Board for Final Plan Approval.

Ms. Eva asked if the street names had been approved. Mr. Holland replied that there were no proposed streets. The Chair noted that the restrictions had been placed on the plan, as requested regarding the need for Site Plan / Design Plan reviews for future lot development.

Mr. Ruggiero inquired about the ten-foot (10') water line easement on Parcel C. Mr. Chaplin replied that there were two (2) water line stubs proposed and that the description was for off-site work (to the property line). Mr. Raposa stated that he was happy to see the water line extended, as it would benefit the Town.

The Chair asked if there were any public improvements. Mr. Holland replied in the negative. The Chair inquired about construction of the swale. Mr. Holland replied that it was likely that the work would be performed now and placed on the potential future library lot before it was sold. The Chair stated that surety would be required, with the applicants engineer to submit an estimate, which would be reviewed by Mr. Berlucchi and possibly the Board's consulting engineers Commonwealth Engineers and Consultants. He stated that the recording of the plan would be held until surety was posted. Mr. Ruggiero noted that the water line would need to be included in the surety. Mr. Berlucchi noted that the water line would be installed within a state road right of way and a bond might need to be posted with the State. He added that a PAP (Physical Alteration Permit) would also be needed. The Chair noted that a surety reduction could be requested as work was completed. Mr. Holland asked if a bond posted with RIDOT (Rhode Island Department of Transportation) for the off site improvements would be sufficient for the Board. Mr. Ruggiero replied that it should be sufficient.

The Chair confirmed that if a bond was posted with RIDOT, the only surety with the Board would be for the swale. Mr. Holland stated that Mr. Chaplin would coordinate with Mr. Berlucchi and would request release once the work was satisfactorily completed. Mr. Chaplin added that the work consisted of a minor regrading.

The Chair reviewed the required findings aloud, Land Development and Subdivision Regulations Section 23-45 a. (1-5). The Board members verbally indicated their agreement with all of the findings. It was noted that the necessary variance for substandard frontage had been received from the Zoning Board. Ms. Eva made a motion to make positive findings. Ms. Nebergall seconded the motion. The motion passed unanimously. Ms. Eva, Ms. Nebergall, Ms. Cote, Ms. Sylvester, Mr. Berg, Mr. Raposa and Mr. Corr voted in favor.

Ms. Eva noted that the locus must be fixed and the surety posted prior to recording of the plan. Mr. Holland asked if surety would be required if the swale work was completed prior to recording. The Chair replied in the negative. Ms. Eva made a motion to grant Final Plan Approval. Ms. Nebergall seconded the motion. The motion passed unanimously.

8. John & Barbara Mills – 17 Peckham Drive – Bristol, RI 02809 and Michael & Nina Mills – 89 Woodlawn Avenue – Bristol, RI 02809 – Minor Subdivision – (No Road Required) – Final Plan Review – 129 Nanaquaket Road – Mills Property – 2 Lots (TC – 8/28/08) Engineer William Smith of Civil Engineering Concepts and applicant John Mills were present on behalf of the petition. Mr. Smith distributed revised plans. He noted that Lot 2 had been adjusted to bring the lot line to the stone wall and stated that the lot size was unchanged. Mr. Smith stated that the draft legal documents had been forwarded to Mr. Spencer. Mr. Ruggiero stated that he had received the documents and that the Board could grant approval subject to his review.

Mr. Smith stated that he was waiting for septic approval for the new system for the existing house and the existing system upgrade for the new proposed house. The Chair noted that plans would be vested for 90 days

after receiving approval. Mr. Smith replied that he expected approval to be issued within approximately two (2) weeks. The Chair requested that the proposed septic locations be depicted on the recorded plans.

Ms. Eva asked if the petitioner would extend the time clock. Mr. Smith agreed to extend the time clock to September 30, 2008 and requested to be placed on the September 2nd agenda, adding that he would put the septic locations and file numbers on the plan for recording. Mr. Berlucchi called attention to Sheet 4, and asked how Mr. Smith could design a septic system with the location of the well and septic of the abutting parcel unknown. Mr. Smith replied that there was no piping on the adjacent side of the house. Mr. Berlucchi expressed concern that the septic could contaminate the well, stating that Mr. Smith should locate the well. Mr. Smith replied that he did not know how to accomplish this, since the homeowners had no idea of the location. The Chair noted that septic issues fell within the purview of RIDEM (Rhode Island Department of Environmental Management). Mr. Ruggiero agreed.

Ms. Eva made a motion to continue the petition to the September 2nd meeting. Mr. Raposa seconded the motion. The motion passed unanimously. Ms. Eva, Ms. Nebergall, Ms. Cote, Ms. Sylvester, Mr. Berg, Mr. Raposa and Mr. Corr voted in favor.

9. Countryview Estates, LLC – 325 Hurst Lane – Tiverton, RI 02878 – Major Subdivision (Road Required) – Final Plan Review – South of Watuppa Avenue, South of Bullfrog Lane – Watuppa Plantation – 14 Lots on 11.64 +/- acres (TC – 08/31/08) The Chair noted that an email had been received from attorney Jeremiah Leary (See file) stating that the applicant was still waiting for approval from the Town's Wastewater Management Committee. Mr. Leary had indicated that there were three (3) outstanding items to be addressed and requested a continuation to the September 2nd meeting, with an extension of the time clock to September 30, 2008.

Mr. Raposa made a motion to continue to September 2nd meeting and to extend the time clock to September 30th. Ms. Nebergall seconded the motion. The motion passed unanimously. Ms. Eva, Ms. Nebergall, Ms. Cote, Ms. Sylvester, Mr. Berg, Mr. Raposa and Mr. Corr voted in favor.

10. Richard K. St. Aubin – 16 Cole Brook Road – Little Compton, RI 02837 and Jason Peckham – Pond Bridge Road – Tiverton, RI 02878 – Minor Subdivision (No Road Required) – Preliminary Plan Review – E/S High Hill Road, South of Fogland Road – Sea Smoke Landing – 3 Lots (TC – 09/03/08) Applicant Richard K. St. Aubin and owner Jason Peckham were present on behalf of the petition. Ms. Eva noted that there was no subdivision name on the plan and asked if she had all the sheets of the plan. Mr. Ruggiero stated that he had had trouble deciphering which lots were involved in the subdivision. He noted that all lots should be shown on the plan in their entirety. Mr. St. Aubin replied that the locus depicted the entire parcels. The Chair agreed with Mr. Ruggiero that all lots should be depicted on the plan. Mr. Ruggiero noted that the Planning Board could waive the requirement for a Class 1 survey. Ms. Eva stated that the locus was not sufficient. Mr. Spencer noted that a match line might be needed. Mr. St. Aubin agreed. Mr. Spencer noted that the existing conditions were not depicted well on the plan. The Chair stated that a Class IV survey might be sufficient for the existing conditions of the large parcels. Mr. St. Aubin replied that this work had already been done.

Ms. Eva asked how this proposed subdivision would affect the concurrent proposed Peckham / RIDEM (Rhode Island Department of Environmental Management) subdivision, which the Board had reviewed in June. Mr. St. Aubin replied that this proposed subdivision would be completed first. Ms. Eva replied that this (cut) had not been mentioned during the review of the Peckham / RIDEM plan. Mr. Peckham stated that RIDEM has not even completed their survey of the parcel yet.

Mr. Raposa inquired about the "Preservation Trust". Mr. St. Aubin replied that it was his family trust, and he would construct a home on the parcel.

Ms. Sylvester asked Mr. St. Aubin to explain the proposal. Mr. St. Aubin stated that a portion of Lot 12 and a portion of Lot 9A (approximately 6.5 acres total with 120' of frontage) would be combined into a separate lot

and noted that the building envelope was depicted on the plan. The water table had been approved for construction of a septic system.

Ms. Eva noted that the addresses of the abutters should be noted on the plan. The Chair stated that the abutter's block and card designation were sufficient. Ms. Eva questioned Mr. St. Aubin's correct address since the plan address differed from that stated on the Certificate of Completeness. He replied that it was 10 Cole Brook Road, Little Compton.

Ms. Sylvester expressed concern regarding the note regarding the property boundary with the Nature Conservancy. She stated that she understood that the Nature Conservancy was having their property surveyed. Mr. Spencer stated that he spoken with John Berg of the Nature Conservancy, who indicated that the property line was now depicted correctly, as it was on the tax maps. Mr. St. Aubin stated that this had been an issue for the perimeter survey of Lot 11, and was separate from this proposed subdivision. Ms. Sylvester stated that she had understood that this agreement was subject to a Class 1 survey by the Nature Conservancy. Mr. St. Aubin replied that the issue had been resolved and was not germane to this petition.

Mr. Raposa noted that the water easement bisected two (2) lots and asked if it would be easier to locate the easement entirely on one lot. Mr. St. Aubin replied that the lot line had not been a concern to the Newport Water Authority or to him. He stated that there was plenty of room for an alternative septic location if needed and the easement had been subtracted from the suitable land area.

Ms. Eva asked if Lot 11 also owned by Mr. Peckham had been touched in any way by this subdivision. Mr. Peckham replied in the negative. Ms. Eva questioned the access to Lot 11. Mr. Peckham replied that it was via Shirley Street. Mr. Ruggiero confirmed that Lot 11 was an unaltered lot of record.

Ms. Nebergall asked about the propriety of this being "Step 1" in a Major Subdivision. Mr. St. Aubin stated that this was just a step in the survey of the rest of the farm. He stated that his plans with Mr. Peckham began four (4) years ago. Ms. Nebergall noted that this subdivision had not been reflected on the RIDEM Concept Plan that had been reviewed by the Planning Board in June (See minutes of June 3, 2008). Mr. St. Aubin stated that the RIDEM plan was concept only and that at the June 3rd meeting engineer William Smith had stated that the plan would be adjusted to reflect this current plan. Ms. Nebergall expressed her concern that any large subdivision could be dealt with in small steps, avoiding the requirements of a Major Subdivision while yielding Major Subdivision results. She opined that the projects were both part of the same subdivision. Mr. St. Aubin replied that there were actually four (4) lots of record involved.

Mr. Corr stated that he would like to see a two sheet plan depicting the parcels in their entirety, even if a Class IV survey was used. He added that he would prefer to see the property line follow the line of the water easement rather than split it. Mr. Corr added that the locus should be corrected to depict existing conditions and asked if crossing the water line with the OSDS (Onsite Wastewater Disposal System) line would be a problem. Mr. St. Aubin stated that he had spoken with the Newport Water Authority, and they had indicated that it would be ok if the OSDS line were sleeved. They had stated a preference for the OSDS line to be located above the water line.

A discussion ensued regarding the earlier RIDEM Concept Plan. Mr. Peckham stated that his plans with Mr. St. Aubin predated RIDEM's involvement and that RIDEM understood that the land to be conveyed to Mr. St. Aubin would not be part of the RIDEM plan. Mr. Ruggiero noted that the Board had seen a plan in June that would constitute a Major Subdivision. The RIDEM Concept Plan contained seven (7) lots. He stated that there were two (2) conflicting proposals, and that the Planning Board had a legal obligation to determine if this was part of a Major Subdivision or a Minor Subdivision. He stated that it was up to Mr. Peckham to clarify this point, which the Planning Board could accept or reject.

Ms. Sylvester stated that the proposed St. Aubin subdivision had been proposed prior to the RIDEM plan, and that the RIDEM plan would not include this proposed new lot. Mr. Berg noted that the Board typically required

a master plan with this large amount of acreage. He added that RIDEM had expressed an interest in avoiding the inclusionary housing requirement for major subdivisions, and were told that they could not avoid the requirement. Mr. Nebergall stated that she did not want to see an evasion of the requirement through the use of multiple minor subdivisions. Mr. Ruggiero stated that incremental subdivisions could pose a problem, and could be viewed as circumvention of the requirements. Mr. Peckham stated that he was not planning to build anything. The Chair expressed his concern regarding the setting of a precedent.

Mr. Spencer stated that these were two separate deals, with Mr. Peckham as the common link. He stated that RIDEM's plan was independent of this plan. Ms. Nebergall stated that the number of purchasers was unimportant and that the result was one major subdivision.

The Chair stated that the Board would need to know the status of the RIDEM plan. He stated that he was meeting with Mr. Peckham's legal counsel (Joseph Marion, Esq.), RIDEM and the Nature Conservancy on Thursday morning (August 7th) and suggested that the petition should be continued until after that meeting.

Mr. St. Aubin stated that he would do whatever was required and that Mr. Peckham was not interested in circumventing the regulations. He asked if each parcel could be dealt with separately. Mr. Ruggiero stated that he had spoken with Mr. Peckham's attorney and that Mr. Peckham was trying to get the maximum value for his property by presenting a yield plan, which depicted the development potential and therefore the value. Mr. Ruggiero stated that the Board needed a real plan, not a hypothetical plan. Mr. St. Aubin replied that the true buildout would be closer to fifty (50) lots and that Mr. Peckham was trying to preserve the farm. The potential for sale of the lots after acquisition by RIDEM or the Nature Conservancy and the duration of development rights were also discussed.

The Chair asked if the applicant would like to extend the time clock. Mr. St. Aubin asked if there were any other aspects of the plan that were conceptually objectionable. Ms. Eva stated that the title block and locus map needed correction. Mr. St. Aubin agreed to extend the time clock to October 31, 2008.

Ms. Cote made a motion to accept the time clock extension to October 31, 2008 and continue the petition to the September 2nd meeting. Ms. Nebergall seconded the motion. The motion passed unanimously. Ms. Eva, Ms. Nebergall, Ms. Cote, Ms. Sylvester, Mr. Berg, Mr. Raposa and Mr. Corr voted in favor.

11. Town Planner / Administrative Officer

A. Town Planner Items

1. Mr. Spencer distributed a **quarterly GIS Status Report**.
2. Mr. Spencer distributed copies of the cover letter to Statewide Planning responding to their comments regarding the **Comprehensive Community Plan update**.

B. Administrative Officer's Report Mr. Spencer's report was distributed.

C. Miscellaneous There was no discussion of this item.

12. Tiverton Planning Board

A. Planning Board Designee for Stone Bridge Committee The Chair asked if anyone was interested in serving on this committee. It was decided to take up this item at the August 19th Special Meeting.

B. Miscellaneous

1. Ms. Eva noted that a RIDEM letter inviting comment on the proposed **Northrip Marina** had been distributed and asked if the Board would comment. Ms. Nebergall replied that the marina had already received approval from the State, so the issue was moot.

C. Correspondence The Chair read aloud a letter of resignation from John Raposa and that this would be Mr. Raposa's last meeting. The Board members thanked Mr. Raposa for his years of service on the Board, expressed their disappointment and wished Mr. Raposa well.

D. Approval of Minutes:

May 20, 2008 Ms. Eva made a motion to approve the minutes as amended. Ms. Sylvester seconded the motion. The motion passed 5-0-2. Ms. Eva, Ms. Nebergall, Ms. Cote, Ms. Sylvester and Mr. Berg voted in favor. Mr. Corr and Mr. Raposa abstained since they were not present at the meeting.

June 3, 2008 Ms. Cote made a motion to approve the minutes as amended. Ms. Eva seconded the motion. The motion passed unanimously. Ms. Eva, Ms. Nebergall, Ms. Cote, Ms. Sylvester, Mr. Berg, Mr. Raposa and Mr. Corr voted in favor.

July 1, 2008 Ms. Eva made a motion to approve the minutes as amended. Ms. Nebergall seconded the motion. The motion passed unanimously. Ms. Eva, Ms. Nebergall, Ms. Cote, Ms. Sylvester, Mr. Berg, Mr. Raposa and Mr. Corr voted in favor.

E. Adjournment: Mr. Raposa made a motion to adjourn. Mr. Corr seconded the motion. The motion passed unanimously. Ms. Eva, Ms. Nebergall, Ms. Cote, Ms. Sylvester, Mr. Berg, Mr. Raposa and Mr. Corr voted in favor. The meeting adjourned at 10:30 P.M.

(Italicized words represent corrections made on the approved date.)

Submitted by: _____
Kate Michaud

Approval Date: September 2, 2008